IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

OP.No. 7634 of 2003(H)

PETITIONER:

CHINNAMMA JACOB W/O LATE P.A.JACOB,
PRASANTH BHAVAN, PIRAVOM, ERNAKULAM DISTRICT,
KERALA.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.GEORGE MATHEWS

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE**
SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI-110 003

2. **STATE OF KERALA, REPRESENTED BY THE**
ADDITIONAL SECRETARY, GENERAL ADMINISTRATION
(F.F.P.A.) DEPARTMENT, THIRUVANANTHAPURAM.

BY ADV. SRI.M.A.MOHAMED ASHRAF, ADDL.CGSC
GOVERNMENT PLEADER SRI.K.V.MANOJ
SRI.M.L.SURESH KUMAR, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08 /08/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.7634/2003

ORDERON CMP. NO.13334/2003 IN OP. NO.7634/2003

DISMISSED

08.08.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER DT. 25.10.1975 ISSUED BY THE DEPUTY SECRETARY PUBLIC FREEDOM FIGHER'S PENSION DEPT., TRIVANDRUM.

EXT.P2:- COPY OF THE LETTER DT. 12.5.95 ISSUED BY THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE REPORT DT. 8.12.97 ISSUED BY THE TAHSILDAR, MUVATTUPUZHA.

EXT.P4:- COPY OF THE LETTER DT. 11.5.98 ISSUED BY THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE REPRESENTATION DT. 8.6.98 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE ORDER DT. 4.8.83 ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM.

EXT.P7:- COPY OF THE JUDGMENT DT. 8.1.99 IN O[P. 333/99 BEFORE THE HIGH COURT OF KERALA.

EXT.P8:- COPY OF THE REPRESENTATION DT. 12.2.99 FILED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE LETTER DT. 30.3.99 ISSUED BY THE 1ST RESPONDENT.

EXT.P10:- COPY OF THE LETTER DT. 4.5.99 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P11:- COPY OF THE JUDGMENT DT. 26.7.02 IN OP. 27332/99 BEFORE THE HONOURABLE COURT.

EXT.P12:- COPY OF THE ORDER DT. 16.1.03.

/TRUE COPY/

P.A. TO JUDGE

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.7634 of 2003-H.

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Dated this the 8th day of August, 2007.

J U D G M E N T

The petitioner is an 83 year old widow of late Sri.P.A.Jacob who was a freedom fighter. He had participated for the freedom struggle and was an accused in CC.No.224/122 before the then Stationary First Class Magistrate Court, Muvattupuzha. A warrant of arrest was issued and he had gone underground on 12.12.1946 till 29.11.1947. He was arrested and detained in the lock up at Muvattupuzha from 14.7.1938 to 24.1.1939. Earlier the application filed by the petitioner's husband was rejected on the ground that the same was received after the prescribed date. Later he was informed as per Ext.P2 of the direction by the Government of India to the State Government to verify the application with available records etc., and send a report regarding eligibility of the applicant for pension. It was also be stated as to whether his sufferings were related to the freedom movement of the country. Ext.P3 is the report sent by the Tahsildar to the District Collector dated 8.12.1997. That report refers to the details regarding her husband as well as certifier Sri.K.T.Jacob, former Revenue Minister. It is stated clearly

in Ext.P3 that the records show that he was a freedom fighter and was participating in the movements relating to freedom struggle and of the Travancore State Congress. It is also clear from Ext.P3 that the records of the case from the court are not available. The petitioner's husband was informed as per Ext.P4 by the State Government that his application and enclosures have been forwarded to the Government of India 'duly recommended'. Since there was further delay, late Sri.P.A.Jacob submitted a further representation Ext.P5. Meanwhile, by Ext.P6 he was sanctioned pension under the Kerala Freedom Fighters Pension Rules. Subsequently he died on 1.12.1998 without getting any benefits under the Central pension scheme. Aggrieved by the inaction of the respondents in the matter the petitioner approached this Court by filing OP.No.333/1999 wherein by Ext.P7 judgment this Court directed the petitioner to file a detailed representation which was directed to be considered by the respondents. She filed a further representation pursuant to the above judgment which is evidenced by Ext.P8.

2. By Ext.P10 the claim was rejected mainly stating that the documentary evidence have not been produced with reference to the official records and that the certificates of the certifiers are not acceptable. This was challenged by the petitioner in OP.No.27332/1999 and by judgment Ext.P11 the said order was quashed. This court in the judgment noticed that the claim

was recommended by the District Advisory Committee and that the personal knowledge certificates have been granted by Sri.K.T.Jacob and Sri.C.M.Abraham who are veteran freedom fighters. Again the matter was considered afresh and the fresh order passed is Ext.P12. The reasons for rejection are that the NARC is not in the proper form and that the certificates issued by Sri.K.T.Jacob and Sri.C.M.Abraham are not acceptable.

3. This is a case where all through the application has been recommended by the District Advisory Committee and by the State Government. Therefore, the question is whether again the application can be rejected on the basis of minute defects either in the NARC or in the certificates given by the certifiers. The legal position is well established by the decisions of the Apex Court in *R.Narayanan v. Union of India* (AIR 1990 SC 746), *Gurdial Singh v. Union of India* (2001(8) SCC 8) and of this Court in OP.No.7749/2000. In AIR 1990 SC 746 it was held that, "no one can really expect official records to have been preserved for a period of 40 years to prove the treatment given to the petitioner for the injuries sustained by him during the freedom struggle. Hence the objection relating to non-production of official records of the relevant period by the appellant to prove the sustainment of injury by him deserves outright rejection as well as outright condemnation."

In 2001(8) SCC 8, the Apex Court held in para.7 as follows:

> **"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."**

4. In OP.No.7749/2000, a similar question like the one is considered, ie., regarding the validity of proper NARC. It was held by this Court that, 'after recommendation from State Government it cannot be rejected mainly on the ground that NARC was not given by the State Government. The SSS pension scheme itself also intends to help them who have given their best part of their lives for the country.' In this case Ext.P3 shows that the records are not available. In Ext.P3 there is a clear report about the sufferings of the late husband of the petitioner. It is also pertinent to notice that the State

Government has duly recommended this case and going by Ext.P2 the Central Government had directed the State Government to verify the matter from available records and report regarding the eligibility of the applicant for pension. The report sought for was as to whether his sufferings were related to the freedom movement of the country. Evidently those facts have been duly reported by the State Government. The application ought not have been rejected for other minor reasons. It is evident from the personal knowledge certificate that the certifiers are prominent freedom fighters and the reasons for rejection of their certificates are also not cogent and convincing. Sri.K.T.Jacob was the former Revenue Minister who had undergone imprisonment. The reasons stated to reject the certificate is that he could not issue a certificate to show that the petitioner's husband was in jail while the certifier was in jail at the relevant period. The said reason is quite unsustainable. There cannot be a requirement that the certifier should be jailed along with the freedom fighter, so as to issue the Personal Knowledge Certificate. Even while in jail they will be aware about the details of others, and hence the certificate cannot be doubted. The other reasons stated are that NARC from State Government should be in requisite form and the personal knowledge certificate issued by Sri.C.M.Abraham is not acceptable in the absence of NARC from State Government. For the reasons already

stated by me , the said reasons are also not sustainable.

5. Hence Ext.P12 is hereby quashed and it is declared that the petitioner is eligible for grant of pension under the SSS Pension Scheme. Consequential orders sanctioning pension along with arrears from the date of receipt of the application will be passed within a period of six weeks from the date of receipt of a copy of this judgment. The petitioner is said to be laid up due to old age and illness. Therefore, earnest efforts shall be taken by the first respondent to disburse the amount also within the period as directed above.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-